

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA**

**IN RE:**

**Moss Construction of the Low Country,  
LLC,**

**Debtor.**

**Case # 17-04252-dd**

**Chapter 7**

**LIMITED OBJECTION TO SALE OF 68 GILDED STREET, BLUFFTON, SC**

Michelle L. Vieira, as Trustee for Joshua J. Zollweg (“Zollweg”) hereby objects to the Notice of Sale entered July 26, 2018 (the “Sale Notice”) for property located at 68 Gilded Street, Bluffton, SC (the “Property”) and in support of such objection, would show as follows:

1. Michelle L. Vieira (“Vieira”) was appointed as Chapter 7 Trustee for Zollweg on November 23, 2016.
2. Zollweg is the 100% owner of Moss Construction Co, LLC, (“Moss”) which prepetition has been treated as a disregarded entity on the joint tax returns of Zollweg and his non-filing spouse.
3. Discovery in the Zollweg case revealed that Zollweg contributed substantial value to Moss, including a contribution of 100% of the unimproved Property, which he purchased using personal funds, and a substantial, yet unquantified, amount of the funds necessary to construct the house on the Property.
4. Zollweg also borrowed funds in his personal name, which he contributed to Moss.
5. Because of the flow of funds between Zollweg and Moss, Vieira filed Moss into its own Chapter 7 and sought to substantively consolidate the two cases.
6. On December 19, 2017, an Order was entered denying the motion to consolidate and determining that Zollweg and Moss were two separate entities and could not be substantively consolidated.
7. On April 18, 2018, Vieira filed a proof of claim against Moss (Claim No. 10) on behalf of Zollweg, asserting claims based on the contributions made by Zollweg including the contribution of the Property to Moss.

### **CAPITAL GAINS TAX LIABILITY**

8. The Notice of Sale anticipates the possibility of capital gains taxes due from the sale but does not quantify those taxes. Under the heading “ESTIMATED EXPENSES OF SALE” the Notice recites “approximately \$TBD for Trustee capital gains tax...all to be paid at closing, except for the capital gains tax”.
9. Moss has never filed a separate tax return because Moss was a 100% solely owned disregarded entity.
10. In the event that the Property is sold under the current proposed sale and there is a capital gains tax event, the Zollweg estate will be liable for such capital gain taxes without having benefit of receiving any of the funds. The Zollweg estate has insufficient funds to pay any capital gains taxes and should not be responsible for any such taxes.
11. Moss has made no provision for payment of such taxes and the proceeds distribution in the Sale Notice does not provide for any payment.
12. The Moss estate has proposed preparing a Schedule C and providing such schedule to the Zollweg estate to be included with the Zollweg estate return rather than filing an estate return for Moss. Such a schedule C would include expenses of the Moss estate such as trustee fees, legal fees and accountant fees as well as other closing costs. Vieira is not comfortable signing and filing a return under oath that includes a sale from a separate bankruptcy estate that has been judicially determined to be a separate entity.
13. The transaction as outlined creates potential undetermined liability for the estate of Zollweg and confers no benefit to creditors of the estate of Zollweg.
14. Vieira believes that there may be a procedure for allowing Moss to pay such taxes, if any, and relieve the Zollweg estate of any potential liability. Such options might include the Moss estate requesting a §505(a)(1) determination from the Bankruptcy Court that the Zollweg estate is separate from the Moss estate for tax purposes, and that any tax liability flowing from the proposed sale is the separate and sole liability of the estate of Moss.
15. Vieira believes that any tax liability generated from the sale should be borne by the Moss estate, since the Moss creditors are receiving the benefit from the sale.
16. Vieira does not believe that the Moss estate is trying to deliberately shift liability but has made no provision in any documentation to protect the Zollweg estate from liability.

WHEREFORE, Michelle L. Vieira requests the following relief:

1. That the Court deny the authorization of the sale until the Moss estate provides language in any Order and settlement agreement pursuant to 11 U.S.C. 505(a)(1), that any and all tax liability generated by the proposed sale is the sole responsibility of the Moss estate and to be reported by the Moss estate;
2. Such other and further relief as the Court deems appropriate.

RESPECTFULLY SUBMITTED on this the 16<sup>th</sup> day of August, 2018, at Murrells Inlet, South Carolina.

BARTON BRIMM, PA

By: /s/ Barbara George Barton, #1221  
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Attorney for Michelle L. Vieira, Trustee

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**CERTIFICATE OF SERVICE**

I, Connie Fraser, hereby certify that on behalf of the Chapter 7 Trustee, I served a copy of the **Limited Objection to Sale of 68 Gilded Street, Bluffton, SC**, filed on **August 16, 2018**, on the Office of the United States Trustee via electronic filing and electronic transmission through CM/ECF, pursuant to SC LBR 9036-1, and on the parties in interest as shown below, as indicated, on August 16, 2018:

Moss Construction of the Low Country, LLC  
732 Milldenhall Road  
Mount Pleasant, SC 29464  
*Via Regular Mail*

Janet B. Haigler, Trustee  
P.O. Box 505  
Chapin, SC 29036  
*Via CM/ECF*

Kevin Campbell, Esq.  
PO Box 684  
890 Johnnie Dodds Blvd.  
Mt. Pleasant, SC 29465  
*Via CM/ECF*

Ivan N. Nossokoff, Esq.  
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BARTON BRIMM, PA

BY: /s/ Connie Fraser

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August 16, 2018